

Will the broadcast flag interfere with consumers ability to make copies of DTV content for their personal use, either on personal video recorders or removable media?

If there is a law defining a 'broadcast flag' that law must guarantee explicitly that consumer's rights are not restricted in any way. That is, the flag must not be used to prohibit or make more difficult anything that a user can currently (legally) do with a VCR or casset recorder. There must be clear protection of the rights granted to the buyer after the "first sale" to re-sell their copy of the content (as one can sell a used book without the permission of the publisher), and a clear statement that legal dodges that attempt to avoid the word "sale", such as claiming that buyers do not actually buy the movies at stores but a limited right to watch the movie under some circumstances, are in fact a sale and are thus protected as are other seller/buyer relationships. We cannot rely on interpretations or assertions of intent to protect us. Also, the mechanism must not interfere in any way with the majority of content, which consists of personally generated recordings and other media that are not produced and sold commercially but are intended to be freely shared (e.g. home videos). Finally, the "broadcast flag" must not interfere with the content falling into the public domain.

Would the digital flag interfere with consumers ability to send DTV content across networks, such as home digital networks connecting digital set top boxes, digital recorders, digital servers and digital display devices? It's clear that the intent of the promoters of the law is to remove the consumer's right to use content freely, but to increase revenue by allowing them to restrict its use unreasonably. As with books, buyers of digital content must have a clear right of first sale, enabling a healthy after-market in used movies, etc., as there is for books.

Would the broadcast flag requirement limit consumers ability to use their existing electronic equipment (equipment not built to look for the flag) or make it difficult to use older components with new equipment that is compliant with the broadcast flag standard? Yes, to achieve the promoter's goal, protected content must be incompatible with, or degraded on, all current media devices. This is clearly not in the interests of the consumers.

Would a broadcast flag requirement limit the development of future equipment providing consumers with new options? Clearly any mandated limitation (such as the inability to record certain movies) on equipment removes the option of buying equipment without that limitation. Thus, consumers would not have the ability to choose to buy equipment that could play "flagged" content and ignore the flag, and be forced into the false choice between either equipment that would play the content in a degraded manner or would have the "flag" limitations imposed.

What will be the cost impact, if any, that a broadcast flag requirement would have on consumer electronics equipment? It would serve to raise the cost of equipment in two ways. First, adding the capability would have an R&D and manufacturing cost. Second, and more importantly, it would isolate the US market from the rest of the planet (where the US law would have no effect) so that, similarly to the situation with cellular telephones, US consumers and electronics companies are at a severe disadvantage relative to the global market. The impact of this would be to drive consumer electronics innovation and manufacturing out of the

United States, at a huge cost in US business and jobs.

Other Comments:

While (as a creator of significant IP myself) I support the right of content creators and distributors to control the initial sale of the content that they create (or distribute), these rights can be protected using the same legal mechanisms that are in place for current media (CD's, cassettes, etc.).

The intent of the constitution is clear, that the goal of the copyright system is to promote content in its natural state, in the public domain, by granting a temporary, artificial monopoly on the control of the initial sale of the content. That control was not intended to either extend eternally in time (i.e. after the work falls into the public domain) or to extend after the first sale (i.e. the content creator cannot control how the content is used after first sale).

It is the job of the FCC to protect the public's interests.